



# TEXAS

MEDICAL BOARD  
PHYSICIAN ASSISTANT BOARD  
STATE BOARD OF ACUPUNCTURE EXAMINERS

*Safeguarding the public through professional accountability*

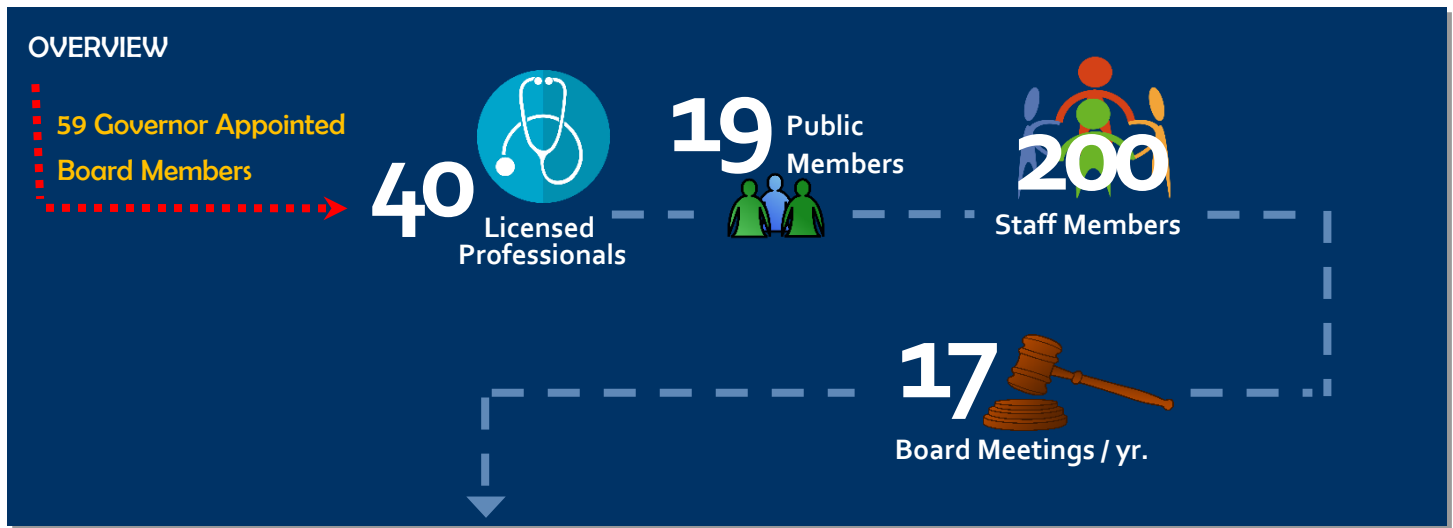
## HOUSE PUBLIC HEALTH COMMITTEE: ORGANIZATIONAL HEARING 87TH LEGISLATURE

Prepared by Texas Medical Board Staff

[WWW.TMB.STATE.TX.US](http://WWW.TMB.STATE.TX.US)

## AGENCY OVERVIEW INFORMATION

- Texas Medical Board (TMB) staff (217.5 appropriated FTEs, including TXPHP) support five boards and two advisory committees regulating over 160,000 license, permit, and registration holders. In addition to physicians licensed and regulated by the Medical Board, the four associated boards license and regulate physician assistants, acupuncturists, medical radiologic technologists, and respiratory care practitioners. All five boards are charged with protecting the public through licensure and disciplinary oversight. TMB staff also provide administrative support to the Texas Physician Health Program (TXPHP).

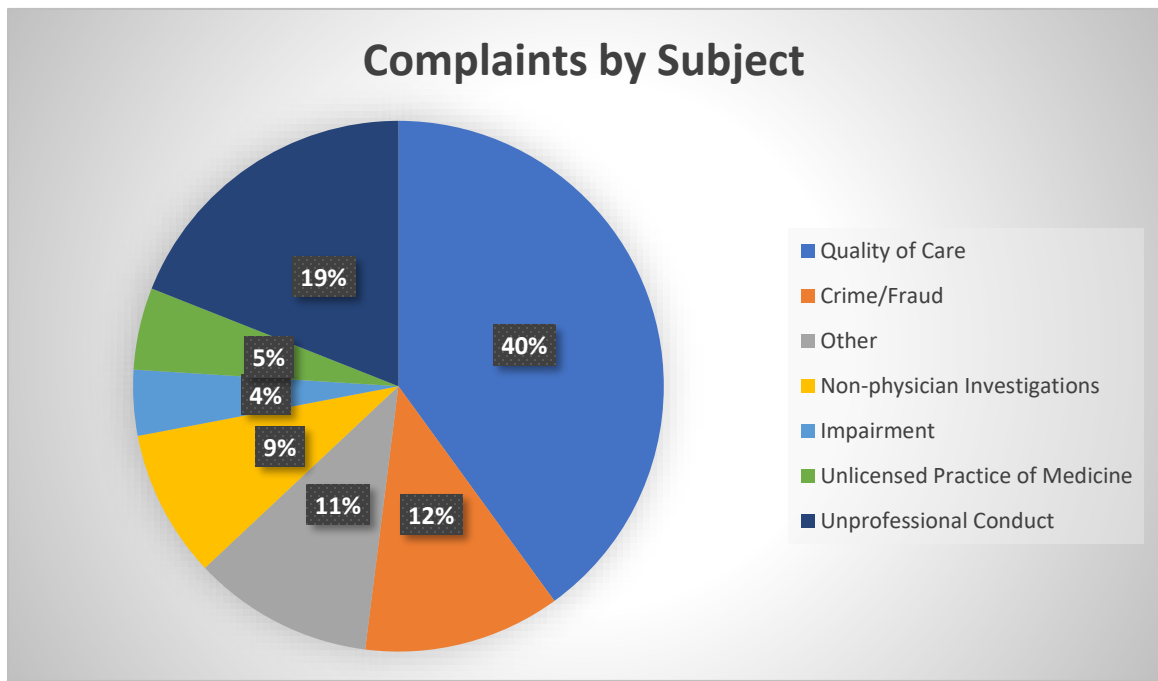


- The agency is organized by three major functions and 11 departments:
  - Enforcement – four departments: General Counsel, Investigations, Litigation, and Compliance;
  - Licensure – two departments: Licensure, Registrations; and
  - Administration – five departments: Executive, Human Resources, Finance, IT, and Government Affairs/Communications.
- The Texas Physician Health Program, established in 2009 by SB 292, is administratively attached to TMB with a governing board appointed by the TMB president. TXPHP provides monitoring and case management services for licensees regulated by TMB as well as all its affiliated boards. Licensees can self-report themselves, be referred by TMB, or be referred by another entity. Licensees are assessed to determine whether they need to participate in the program due to a potentially impairing health condition (substance abuse disorders, physical illnesses, psychiatric conditions, etc.). The program currently monitors approx. 280 participants.
- On average, TMB receives almost 9,000 complaints per year across all license types, with the largest complaint category being standard of care (medical treatment) issues. Of these, investigations are opened on approx. 22% (2,000) resulting in either a disciplinary action or a non-disciplinary remedial plan for approximately 6.5% (584).
- In fiscal year 2020, TMB issued over 13,000 new licenses across all license types with physician licenses accounting for the greatest portion of new licenses (4,862). In FY 20, physician licenses were issued in an average of 31 days, this is 20 days sooner than the 51-day legislative mandate for physician license issuance.

## ENFORCEMENT & LICENSURE STATISTICS

The following charts provide an overview of the TMB's enforcement and licensure workload.

Enforcement Activity (all license types)	FY 20	FY 19	FY 18
<b>1. Complaints &amp; Investigations</b>			
Complaints Received	8,927	8,799	8,955
<i>Complaints processed as follows:</i>			
Investigations Opened	1,915	2,127	2,201
Jurisdictional Not Filed Complaints	3,636	3,549	3,659
Non-Jurisdictional Complaints	3,376	3,123	3,095
<b>2. Disciplinary Hearings &amp; Activity</b>			
Informal Settlement Conference (ISC) or Show Compliance Proceeding	515	728	673
Temporary Suspension Hearings	51	41	39
Formal Complaints Filed at SOAH	36	82	94
Hearings at SOAH	7	12	20
<b>3. Actions by Board</b>			
<i>Disciplinary Actions:</i>			
Revocations/Surrenders	74	87	73
Suspensions (# Includes Temporary Suspensions)	54	62	48
Public Reprimands	41	49	39
Restrictions (# Includes Temporary Restrictions)	131	181	172
Administrative Penalties	2	0	1
Cease and Desist	22	19	17
Licensed with Conditions	20	23	10
Agreed Resolutions	91	39	N/A
Consent Orders	0	1	N/A
<b>Subtotal, Disciplinary Actions</b>	<b>435</b>	<b>461</b>	<b>360</b>
<i>Non-Disciplinary Actions:</i>			
Remedial Plans	137	143	176
Remedial Plans – Licensure	12	25	62
<b>Subtotal, Non-disciplinary Actions</b>	<b>149</b>	<b>168</b>	<b>238</b>
<b>Total Board Actions</b>	<b>584</b>	<b>614</b>	<b>598</b>
<b>4. Compliance</b>			
Current probationers (have an active disciplinary order)	687	687	669



#### *FY 18 – FY 20 Physician Licensure Statistics*

FY	Average # of Days to Issue License	Applications Received	Licenses Issued	Total Physician Licensees
FY 20	31	6,288	4,862	89,605
FY 19	35	5,686	4,869	86,655
FY 18	38	5,717	4,514	84,552

#### *FY 18 – 20 Licensure Statistics*

Primary License, Permit, & Registration Types	FY 2020	FY 2019	FY 2018
Physician	89,605	86,655	84,552
Physician in Training (PIT) Permit	8,590	8,250	8,032
Physician Assistant	10,205	9,620	9,089
Acupuncturist	1,320	1,307	1,275
Surgical Assistant	639	586	520
Added by SB 202 (2015)			
Medical Radiologic Technologist	32,645	31,836	31,159
Respiratory Care Practitioner	15,963	15,330	15,361
Medical Physicist	695	655	569
Perfusionist	454	420	388
Total	160,116	154,659	151,111

## TMB COVID RESPONSE

Over the past year, the Texas Medical Board (TMB) has been closely working with Texas officials, professional associations, and individuals to aid in the state's response to the COVID-19 pandemic. This includes actions like increasing the number of available providers through expedited emergency licensure, expanding the use of telemedicine, and relieving or delaying some administrative requirements of licensees, like extending deadlines for licensure renewals and in-person continuing medical education.

Our expedited emergency licensing is a great example of the excellent work done by the TMB staff throughout the pandemic. Importantly, this work is being done concurrently with the Board's existing, steady workload of processing thousands of other health care professionals to work in our state during this critical time. The TMB has issued over 3,900 emergency licenses and re-activated licenses for 96 retired licensees and our incredible staff has managed to issue or reactivate most of these licenses within 24 hours of receiving the application.

All this action required robust outreach and communication with our licensees, stakeholders, and members of the public. As such, the TMB quickly established a dedicated COVID-19 page on our website so information on the agency's COVID response could be easily located. Understanding how critical timely and transparent communication was during this time, the TMB took care to issue and post press releases or web update notifications for each action it took regarding expedited licensure, waivers, emergency rules, and guidance. In terms of guidance, to date, the agency has crafted approximately six dozen FAQs to help individuals navigate the ever-changing COVID landscape as it relates to the TMB.

Below is a more detailed summary of what the TMB has been doing for our customers since the Governor declared the disaster.

### Expansion of Telemedicine

Less than 24 hours after the emergency declaration, the Board secured a waiver from the Governor's office to expand the use of telemedicine. This expansion allowed providers to establish a physician-patient relationship via telephone and enabled phone consults to diagnose, treat, order tests, and prescribe for all conditions. This waiver will remain in effect until the March 13, 2020 disaster declaration is lifted or expires.

### Fast-tracked Temporary Licensure

The Board also exercised its use of existing emergency rules to fast-track temporary licensing of out-of-state physicians, physician assistants, certain retired physicians, and other TMB license types to aid in the COVID-19 response. As a result of this, to date, the TMB has temporarily licensed more than 3,900 out-of-state providers, over 3,100 of which are physicians. Additionally, 96 practitioners have reactivated their license. TMB will continue this practice until the March 13, 2020 disaster declaration is lifted or expires. In the event the Governor's March 13, 2020 disaster declaration is terminated, emergency permits will remain in effect for an additional 30 days after the termination of the disaster declaration to allow permit holders and health care entities to properly plan.

### License Renewal and Continuing Education Extensions

Immediately on the heels of the disaster declaration, deadlines for license renewal and completion of continuing education hours were extended for ALL TMB license and permit holders. TMB will consider extenuating circumstances surrounding the completion of license/permit renewal requirements for the duration of the disaster declaration.

### Telemedicine for Chronic Pain Patients

In the days directly following the disaster declaration, the Board turned its attention back to telemedicine and worked with the Governor's office to establish a waiver allowing telephone refill(s) of prescriptions for existing chronic pain patients. The TMB ultimately adopted emergency rules to continue this practice which are currently in effect. As of March 1, 2021, the TMB was pursuing an emergency amendment to continue this practice for 60 additional days or until the March 13, 2020 disaster declaration is lifted or expires, whichever is shorter.

### Prohibition on Elective Surgeries and Procedures

One of the Board's greatest challenges came with the issuance of Executive Order GA-09 by the Governor on March 22nd. This order required the postponement of all surgeries and medical procedures that were not immediately medically necessary, as determined by the patient's physician, to preserve the state's supply of Personal Protective Equipment (PPE) and hospital capacity, as well as reduce Texans' exposure to COVID-19. Given the seriousness of the circumstances and the need for swift action against violations of the order, the TMB was compelled to pass emergency rules to enforce the order on March 23rd. These rules have since expired.

### Final Examination, Supervision and PIT Waivers

As was previously mentioned, temporary licenses were granted to out-of-state providers early in the disaster, but the increasing presence of COVID-19 eventually necessitated an expansion of all healthcare providers in the state. In response to this need, two additional waivers impacting TMB licensees were established. Each of these waivers will remain in effect until the March 13, 2020 disaster declaration is lifted or expires.

Under a waiver approved on April 5th, Physician Assistants (PA), Medical Physicists, Perfusionists, and Respiratory Care candidates for licensure who had completed all other requirements were allowed to enter the workforce under an emergency license working under supervision prior to taking their final licensure exam. Additionally, this waiver allowed more flexibility between physicians and the PAs they supervise including allowing for oral prescriptive delegation agreements.

The following week, on April 11th, the Governor approved a waiver to allow Texas hospitals and facilities associated with Graduate Medical Education (GME) training programs to be able to utilize Physician in Training (PIT) permit holders in areas outside of their GME training program with the goal being to increase the availability of medically trained individuals to respond to COVID-19.

### TMB COVID Response Observations

#### *Emergency Licensure*

Except for a couple of areas, the TMB was well-positioned to rapidly respond and adapt to the various challenges presented by COVID. One key tool for the agency was the ability to issue emergency licenses to out-of-state healthcare providers in an expedited manner once the Governor made the disaster declaration. [Texas Administrative Code §172.20 and §172.21](#) were adopted shortly after the close of the 86<sup>th</sup> legislative session to provide a method for out-of-state providers to practice in Texas during a disaster. The process delineated in these rules was based on ad-hoc actions taken during Hurricane Harvey and these same rules allowed the TMB to expeditiously license providers responding to the COVID crisis.

#### *Telemedicine*

In the future, the TMB could benefit from expedited authority like that of emergency licensure for telemedicine in the event of a declared disaster. The ability to quickly allow for the use of telephone-only encounters to establish a physician-patient relationship has proven an invaluable option throughout the COVID crisis as it has enabled Texas patients to get the care they need while maintaining proper social distancing. A statutory change allowing the TMB to

immediately authorize this process would ensure that Texans experience no delays in medical care and feel comfortable receiving said care.

#### *Informal Settlement Conferences (ISCs)*

The purpose of an Informal Settlement Conference (ISC) is to provide an informal forum for members of the medical board to review complaint and investigation information against a licensee and for the licensee to demonstrate that he or she has complied with the Medical Practice Act. These complaint investigations and the disciplinary process comprise essential functions of the Board and, per current statute, are required to be held in-person if that is the licensee's preference. The physical, in-person appearance provision became highly problematic for the first several months of the pandemic due to social distancing requirements. Licensees needing to appear before an ISC were given the option to participate telephonically or virtually, but many declined this option and relied on the in-person provision to delay this disciplinary proceeding. At its height, this resulted in the postponement of approximately 175 cases.

The TMB was ultimately able to secure permission from the Governor's office to adopt emergency rules to redefine the word "appear" so that videoconference technology could be required for ISCs in lieu of a physical, in-person meeting. Since the implementation of this rule, the TMB has been able to effectively address the backlog and has realized additional key benefits. The TMB believes these additional benefits are significant enough to warrant making the emergency rule permanent in statute.

First, scheduling ISCs has become more efficient. In the past, TMB staff has struggled to work around multiple board member schedules to identify a date and time for everyone to be physically present at the TMB offices in Austin for the ISC. Additionally, TMB only had one room in the Hobby Building in which to hold the ISCs. This limited the number of ISCs that could be scheduled per day and caused scheduling complications in finding an agreeable date and time. Transitioning to videoconference ISCs has eliminated the need for individuals to make special travel arrangements allowing for more scheduling flexibility. This new virtual capability has also allowed for many more ISCs to be held per day via many virtual rooms. This has greatly increased scheduling options as well. Additionally, board members and respondents lose less time away from their patients and regular jobs to attend ISCs. This saves respondents money on travel costs and counsel billable hours and allows them to earn more money on a day they would have otherwise had to take off. Virtual ISCs also reduces the burden on board members when performing this important public service.

Second, eliminating travel to Austin for ISCs has saved the state money by greatly reducing travel reimbursement for board members. For reference, in FY 2019, the TMB held 728 ISCs so the move to videoconference could result in even greater savings moving forward.

Overall, the response to the move to videoconference ISCs has been well received by all parties. A permanent transition to videoconference ISCs would continue to provide ample means for licensees and their representatives to respond to and address alleged violations of laws regarding the practice of medicine but would do so in a more efficient and fiscally responsible manner.

#### *Open Meetings*

Just as the TMB was compelled to begin conducting ISCs via videoconference, like many organizations, the TMB was also obliged to transition all board meetings to a virtual platform. The TMB found that meeting participants generally adapted quickly to this new way of conducting business and the agency has enjoyed great success holding videoconference board meetings since the beginning of the disaster declaration.

Aside from keeping everyone safe during the pandemic, virtual board meetings have proven beneficial in other ways as well. First, they have yielded cost savings for the agency. Like ISCs, eliminating travel to Austin for board meetings has saved the state money by reducing travel reimbursement for board members. Between the Texas Medical Board and its four affiliated boards (Physician Assistant, Acupuncture, Medical Radiologic Technology, Respiratory Care) there are 59

board members from across the state who, prior to 2020, would physically meet in Austin a combined 17 times per year. Adding to these travel costs is the fact that Medical Board meetings are two-day events.

Another bonus to conducting meetings virtually has been the enhanced access it has afforded interested parties to board proceedings. Due to physical and technological limitations, the TMB has never been able to securely livestream its board meetings thus removing the opportunity for individuals to witness board proceedings in real-time. In the past, unless an individual was willing to travel to Austin, they would be unable to watch proceedings or offer public comments face-to-face to board members. Virtual board meetings have not only proven fiscally prudent, they have also helped the agency connect with a greater number of Texans making the TMB even more transparent.

## House Bill 1504 Implementation

HB 1504 continued the Texas Medical Board (TMB) until September 1, 2031 and provided for certain across-the-board Sunset provisions. A few notable provisions from the Sunset bill are highlighted below in greater detail. The TMB was charged with and, over the interim, has completed the process of adopting rules to fully implement the following:

### Expedited Licensure

Per HB 1504, the Board adopted rules authorizing a new process for out-of-state physicians to obtain licensure more easily in Texas, helping to ease the issue of physician shortages throughout our state.

The Board's expedited licensure rules now include applicants who hold a full physician license in good standing in another U.S. state or Canada. The out-of-state physician must be actively practicing medicine and meet certain criteria, including no history of negative peer review actions, license disciplinary history, or be under investigation by any licensing or law enforcement agency.

### New Criminal History Background Checks

The TMB has begun fingerprinting existing acupuncturist, physician assistant, and surgical assistant licensees for the Texas Department of Public Safety (DPS) and Federal Bureau of Investigation (FBI) criminal history background checks.

### Enforcement Process Updates

Additional Sunset bill changes include increased flexibility with non-disciplinary Remedial Plans, the means to legally remove certain dismissed complaints from licensee public profiles faster and clarifying language on board appeals of State Office of Administrative Hearings findings of fact and conclusions of law. These changes help to provide a better balance of protecting the public while also ensuring due process for licensees.

## Streamlined Complaint Process

Aside from the enforcement changes required by the Sunset bill, the TMB took initiative over the interim to identify further ways to streamline our processes. To better dedicate the TMB investigative resources to high priority cases like those involving serious quality of care complaints, sexual boundary complaints and cases of severe impairments, the Board authorized staff to identify potential violations that might be quickly and efficiently resolved without a formal disciplinary proceeding. These include complaints involving administrative violations like failure to timely complete required continuing medical education, a delay in releasing medical records, misleading advertising, etc.

Per the TMB's revised process, instead of initiating formal investigations in the aforementioned case types, the Respondent is notified a complaint has been received and given an opportunity to address the situation and provide a corrective action plan to ensure that similar violations are not repeated. This not only has allowed the TMB to better allocate resources, but also benefits Respondents who do not have to be under a Board investigation for an extended period of time and/or receive a public action, and benefits complainants who in many cases get a quick resolution to



their complaint. For example, if the complaint involves a failure to release medical records to a patient, this process can require the licensee to produce the records to the patient and submit a corrective action plan to address the issue. This gets the patient their records quickly to facilitate further care and does so without leading to a public order against the licensee for a first-time offense.

The Board has only authorized this process for first time violations, so repeat violations may still result in formal disciplinary actions. Adopting this process has already allowed the Board to resolve over 200 cases without a formal investigation. The Board retains final determination authority over all actions taken by staff on these cases and reviews all resolutions at regularly scheduled Board meetings. The TMB has received very positive feedback from licensees and their attorneys and results for complainants are obtained in a more meaningful and timely manner.

## Jurisprudence (JP) Exam

On September 1, 2019, the TMB took steps to improve the statutorily required Texas Medical Jurisprudence (JP) Exam requirement for licensees. Aside from lowering the fee for the exam, applicants no longer must travel to a testing site to take the exam. Instead, the test is now administered online and can be taken from the comfort of their own home. Additionally, in the past, the JP Exam was a general-purpose exam without regard to license type. The new JP exams are license-specific and help in targeting the required learning.

## Electronic Licensing

As a way of increasing efficiency in existing processes, while reducing costs, the Board has been developing innovations to its online licensing systems to create a better user experience with added features and on September 1, 2019 the Board transitioned to electronic licenses for a more paperless experience and to allow for more enhanced licensee control. Licensees can now view, save, or print a copy of their active license as needed.

## Opioids

The 86th Legislature made several changes related to opioid prescribing and created new continuing education requirements for prescribers and dispensers which required the TMB to adopt rules.

### HB 3284

March 1, 2020 – Prescribers are required to check a patient’s Texas Prescription Monitoring Program (PMP) history before prescribing opioids, benzodiazepines, barbiturates, and carisoprodol. Exceptions are provided for cancer patients and those in hospice care.

### HB 2174

January 1, 2021 – Electronic prescribing for opioids is required; waivers are authorized based on specific criteria.

### HB 3285, HB 2454, HB 2174

Three individual bills passed during the 86<sup>th</sup> session requiring CME specific to opioids. To reconcile these bills and discuss other issues related to opioids, the TMB established an Opioid Taskforce. An input session was held in October 2019 to hear from a broad range of individuals and stakeholders, including patients, physician groups, hospital systems, health care regulatory agencies and elected officials. As a result of this meeting, the TMB was able to adopt rules requiring at least two hours of continuing medical education (CME) training in topics related to the prescription of opioids and other controlled substances.